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16 Counsel for Defendants Alfresco Software Ltd.,
17 Alfresco Software, Inc. and Carahsoft Technology
Corporation

18 UNITED STATES DISTRICT COURT
19 NORTHERN DISTRICT OF CALIFORNIA
20 SAN FRANCISCO DIVISION

21 OPEN TEXT S.A.,
22 Plaintiff,
23 v.
24 ALFRESCO SOFTWARE LTD.;
25 ALFRESCO SOFTWARE, INC.; and
CARAHSOFT TECHNOLOGY
CORPORATION,
26 Defendants.
27
28

Case No. C 13-04843 JD

**JOINT CASE MANAGEMENT STATEMENT,
DISCOVERY PLAN & [PROPOSED] ORDER**

DEMAND FOR JURY TRIAL

1 Pursuant to Rule 26(f) of the Federal Rules of Civil Procedure and Civil Local Rule 16-9,
 2 Plaintiff Open Text S.A. (“Open Text”) and Defendants Alfresco Software Ltd. and Alfresco
 3 Software, Inc. (“Alfresco”) and Carahsoft Technology Corporation (“Carahsoft”) (collectively
 4 “Defendants”) hereby submit the following Joint Case Management Statement and Discovery Plan.

5 **I. JURISDICTION & SERVICE:** This Court has jurisdiction over the subject matter of this
 6 action pursuant to 28 U.S.C. §§ 1331, 1338, and the Patent Laws of the United States, 35 U.S.C. § 1,
 7 et seq. Venue is proper in this district and the Court has personal jurisdiction over all current parties.

8 **II. FACTS**

9 Open Text filed the Complaint in this case on June 5, 2013, seeking damages, preliminary
 10 and permanent injunctions, and other relief, alleging that Defendants directly and indirectly and
 11 willfully infringe U.S. Patent Nos. 7,647,372; 7,975,007; 6,223,177; 6,917,962; 7,287,055;
 12 7,299,258; 7,320,018; 7,734,694; and 8,176,122. Open Text contends that it is the sole holder of all
 13 right, title, and interest in the ’372, ’007, ’177, ’962, ’055, ’258, ’018, ’694, and ’122 patents
 14 (collectively, the “Patents-in-Suit”). Defendants have not yet answered the Complaint.

15 The principal factual issues in dispute are:

- 16 1. whether Defendants have infringed and are infringing the Patents-in-Suit;
- 17 2. whether Defendants have actively induced and/or contributed to the infringement by
 others of the Patents-in-Suit;
- 18 3. whether any such infringement by Defendants is willful;
- 19 4. whether the Patents-in-Suit are valid;
- 20 5. whether Open Text is entitled to a preliminary and permanent injunction;
- 21 6. the amount of Open Text’s damages, if any;
- 22 7. the amount of enhanced damages, under 35 U.S.C. §§ 284 and 285, if any; and
- 23 8. the identification of any other relief that is warranted for any infringement by
 Defendants.

24 **III. LEGAL ISSUES:** The principal disputed legal issues in this action are:

- 25 1. the construction of the claims of the patents-in-suit;
- 26 2. issues of law related to each factual issue set forth in Section II above.

1 **IV. MOTIONS:** The motions thus far in this action:

Docket No.	Title	Status
37	Defendants' Motion to Transfer Case	Granted
35	Defendants' Motion to Dismiss Plaintiff's First and Second Causes of Action	Pending

5 **V. AMENDMENT OF PLEADINGS:** Open Text reserves its right to seek leave to amend or
 6 supplement its pleadings to allege infringement of additional patents or to add additional parties as
 7 discovery continues depending upon the schedule adopted by the Court in this case. Defendants
 8 reserve their right to seek leave to amend or supplement their pleadings (once filed) to assert
 9 additional defenses and counterclaims as discovery and the case progresses.

10 **VI. EVIDENCE PRESERVATION:** All parties have reviewed the Guidelines Relating to the
 11 Discovery of Electronically Stored Information. The parties confirm that they have met and
 12 conferred pursuant to Fed. R. Civ. Proc. 26(f) regarding the reasonable and proportionate steps taken
 13 to preserve relevant information.

14 **VII. DISCLOSURES:** The parties met and conferred on March 3, 2014, regarding initial
 15 disclosures, early settlement, ADR process selection, and the discovery plan. The parties served
 16 their initial disclosures on March 21, 2014. The parties reserve their rights to supplement their
 17 disclosures as discovery continues.

18 **VIII. DISCOVERY**

19 **A. Discovery taken to date.** Discovery commenced on March 3, 2014.

20 **B. Scope of discovery.** The parties anticipate that the scope of discovery in this case
 21 will include at least the topics identified as principal factual issues in Section II above. The parties
 22 intend to continue pursuing discovery in the form of requests for production of documents and
 23 things, interrogatories, depositions, and other forms of discovery authorized by the Federal Rules,
 24 including discovery on non-parties. The parties reserve all rights to seek modifications of the limits
 25 discussed below and agree to confer in good faith if a need arises for additional discovery and/or
 26 modifications of limits on discovery. If this case is consolidated with the related *Open Text S.A. v.*
 27 *Box, Inc., et al.*, (Case No. C 13-04910 JD) case (see Section X, below) for discovery purposes, the
 28 discovery limits proposed below may need to be revisited.

1 **C. Agreed discovery-related issues.**

2 **1. Requests for Admission and for Documents** – The parties agree that there should
 3 be no limits beyond those set forth in Federal Rule of Civil Procedure 36 on requests for admissions
 4 and in Federal Rule of Civil Procedure 34 on requests for production.

5 **2. Interrogatories** – The parties agree that an interrogatory directed toward all asserted
 6 patents and/or all accused products will count as a single interrogatory. The parties agree to the
 7 following interrogatory limits only if this case is not consolidated with the *Box Case*: Open Text
 8 will be limited to 20 common interrogatories to Defendants, 10 interrogatories to the Alfresco
 9 Defendants, and 10 interrogatories to Carahsoft. Defendants are limited to 20 collective
 10 interrogatories to Open Text and 10 individual interrogatories to Open Text from the Alfresco
 11 Defendants and 10 individual interrogatories from Carahsoft. If this case is consolidated with the
 12 *Box Case*, the parties' disputed interrogatory proposals are in Section VIII(D)(3), below.

13 **3. Electronic Service** – The parties agree to accept service by e-mail, with hard copies
 14 to follow by overnight mail upon request. The parties have established e-mail distribution lists
 15 accessible through a single external e-mail address. Three days shall be added to the time to respond
 16 to discovery requests served via email in accordance with FRCP 6(d). The time to respond to Court
 17 filings, whether or not filed under seal, is not impacted by this provision, but the parties will serve
 18 sealed documents the same day they are filed via electronic means if possible.

19 **4. Stipulated Protective Order** – The parties agree that a stipulated protective order
 20 will be required and are working in good faith to prepare a proposed order for the Court.

21 **5. E-Discovery** – The parties agree that documents and electronically-stored
 22 information (ESI) shall be produced in accordance with a Stipulated Order Regarding Discovery of
 23 Electronically-Stored Information and Hard Copy Documents ("Stipulated ESI Order") to be filed
 24 separately.

25 **6. Expert Depositions** – The parties agree to 7 hours of depositions per expert, per
 26 report. Each expert witness providing a report may be deposed for up to seven hours during a single
 27 day for each expert report served.

28 **D. Disputed discovery-related issues.**

1 **1. Acceptance of service of subpoenas and document requests:** **Open Text's**
 2 **Proposal:** Open Text's counsel agrees to accept service of properly-issued corporate deposition
 3 subpoenas and document subpoenas on behalf of non-parties Open Text, Inc. and Open Text Corp.
 4 But these are nonparty entities not under the control of Open Text and, therefore, they require
 5 legally-cognizable discovery process as a result of their third-party status. In addition, Open Text
 6 Corp. is a Canadian corporate citizen subject to Canadian law and requires valid Canadian legal
 7 process to provide discovery. **Defendants' Proposal:** Defendants request that Open Text agree that
 8 Defendants not be required to issue subpoenas to these Open Text related entities and, instead, that
 9 deposition notices and document requests to Open Text, Inc. and Open Text Corp. could be served
 10 as if they were a party to this lawsuit.

11 **2. Party and Third Party Depositions:** **Open Text's Proposal:** **Party Depositions:** 70
 12 hours of party depositions, where no single day of deposition testimony will last more than seven
 13 hours. For purposes of calculating hours for party depositions, the depositions of witnesses
 14 employed by Open Text entities Open Text Corp. and Open Text, Inc. would be counted as Party
 15 Depositions. To the extent permitted, Open Text's counsel agrees to cooperate in coordinating the
 16 depositions of employees of non-party Open Text entities Open Text Corporation and Open Text,
 17 Inc. **Third-Party Depositions:** 80 hours of third-party depositions per side (i.e. Plaintiff and
 18 Defendants) (including third-party inventors but not including expert depositions), with no limit on
 19 the number of depositions and with a limit of seven hours per witness. To the extent permitted,
 20 Open Text's counsel agrees to cooperate in coordinating the depositions of any non-party inventors
 21 that Open Text's counsel will represent. Open Text notes that Defendants previously agreed to the
 22 above deposition limits. (Dkt. No. 109 at p. 4, § VIII(C)(7).) **Consolidation:** If the cases are
 23 consolidated, Open Text proposes it be allowed 60 hours of party depositions against each
 24 Defendant Group (Box/Carahsoft and Alfresco Defendants/Carahsoft) and that consolidated
 25 Defendants be collectively allowed 50 hours of party depositions against Open Text on common
 26 issues and an additional 10 hours per consolidated Defendant on issues unique to individual
 27 Defendants. Third-party deposition limits to remain unchanged, except Defendants' hours will be
 28 allocated across all consolidated Defendants. Defendants are using the guise of consolidation, which

1 has not yet occurred, to try and add an additional 120 hours of depositions over what they previously
 2 agreed to. (Dkt. No. 109 at p. 4, § VIII(C)(7).) Open Text believes consolidation should streamline
 3 discovery and Defendants' proposed massive expansion of deposition limits frustrates this purpose.

4 **Defendants' Proposal:**¹ **Party Depositions:** Defendants in the consolidated cases collectively are
 5 entitled to up to 120 hours of depositions of the Open Text entities and their employees; Open Text
 6 is entitled to 60 hours of each Defendant Group (Box/Carahsoft and Alfresco/Carahsoft are each a
 7 Defendant Group). No single day of deposition testimony will last more than seven hours. For
 8 purposes of calculating hours for party depositions, the depositions of witnesses employed by Open
 9 Text entities Open Text Corp. and Open Text, Inc. would be counted as Party Depositions. To the
 10 extent permitted, Open Text's counsel agrees to cooperate in coordinating the depositions of
 11 employees of non-party Open Text entities Open Text Corporation and Open Text, Inc. **Third-Party**
 12 **Depositions:** Plaintiff and Defendants in the consolidated cases collectively are entitled to up to 80
 13 hours of third-party depositions per side (i.e. Plaintiff and consolidated Defendants) (not including
 14 expert depositions or Inventor depositions), with no limit on the number of depositions and with a
 15 limit of seven hours per witness. **Inventor Depositions:** At this juncture, Open Text's counsel has
 16 not determined which, if any, of the inventors of the Patents-in-Suit it will be representing in this
 17 case. Each of the 10 named inventors may be deposed for up to 7 hours each collectively by
 18 Defendants in the consolidated cases, with the parties to meet and confer regarding whether the time
 19 limit may be reduced. Third-party deposition time limits do not apply, as set forth above. To the
 20 extent permitted, Open Text's counsel agrees to cooperate in coordinating the depositions of any
 21 non-party inventors that Open Text's counsel will represent.

22 **3. Consolidated Case Interrogatory Limits: Open Text's Proposal:** If the cases are
 23 consolidated, Open Text will be limited to 20 collective interrogatories to each Defendant Group
 24 (Box/Carahsoft and Alfresco Defendants/Carahsoft) and 10 individual interrogatories to each
 25 consolidated Defendant; consolidated Defendants will be limited to 20 collective interrogatories to

26 ¹ Defendants propose this deposition discovery plan assuming the Court consolidates this case with
 27 the *Box* case for claim construction, validity, and discovery issues. Should the Court not consolidate
 28 the two matters, the Defendants agree that for Party depositions, each side be entitled to 70 hours of
 party depositions and each party be entitled to 80 hours of third-party depositions per side, which
 would include inventor depositions.

1 Open Text and 10 individual interrogatories to Open Text from each consolidated Defendant.

2 **Defendants' Proposal:** Open Text will be limited to 20 common interrogatories to each Defendant
3 Group, 10 interrogatories to the Alfresco Defendants, and 10 interrogatories to Carahsoft. Each
4 Defendant Group is limited to 20 collective interrogatories to Open Text and 10 individual
5 interrogatories to Open Text from the Alfresco Defendants and 10 individual interrogatories from
6 Carahsoft.

7 **IX. CLASS ACTIONS:** This is not a class action.

8 **X. RELATED CASES:** *Open Text S.A. v. Box, Inc., et al.* (Case No. C 13-04910 JD) (the “*Box*
9 Case”). Before reassignment, Judge Davila stated that he intended to consolidate the cases (*see* Case
10 Number 13-4843, Transcript of Proceedings April 10, 2014 at p. 4:14-25); however, to date there has
11 been no consolidation order.

12 **XI. RELIEF**

13 **Open Text's Sought Relief:** Open Text seeks the relief of an order of the Court that
14 Defendants have been, and are currently, directly and indirectly infringing each of the Patents-in-
15 Suit; a determination that Defendants' acts of infringement are willful; an award of damages to
16 compensate Open Text for Defendants' past infringement, through the date of trial in this action, of
17 the Patents-in-Suit; an award by the Court of pre- and post-judgment interest on such damages; an
18 order by the Court for an accounting of damages incurred by Open Text between the close of fact
19 discovery and the entry of a final, non-appealable judgment, including for willful infringement; a
20 determination that this patent infringement case is exceptional pursuant to 35 U.S.C. §§ 284 and 285
21 and an award to Open Text of its costs and attorneys' fees incurred in this action; an order of the
22 Court preliminarily and permanently enjoining Defendants from infringing any of the Patents-in-
23 Suit; if the Court declines to enjoin Defendants from infringing any of the Patents-in-Suit, an award
24 of damages for future infringement in lieu of an injunction including exemplary damages, attorneys'
25 fees, and costs for willful infringement; and an award of such other and further relief as the Court
26 deems just and appropriate, or that Open Text may be entitled to as a matter of law or equity.

27 **Defendants' Sought Relief:** Defendants have not yet answered the Complaint and have not,
28 therefore, requested relief.

1 **XII. SETTLEMENT AND ADR:** The parties agreed to private mediation. Dkt. 106.

2 **XIII. CONSENT TO MAGISTRATE JUDGE FOR ALL PURPOSES:** Whether all parties
3 will consent to have a magistrate judge conduct all further proceedings including trial and entry of
4 judgment. YES NO

5 **XIV. OTHER REFERENCES:** The parties do not presently believe that the case is suitable to
6 refer to binding arbitration or a special master. Additionally, they do not believe that this case is
7 suitable to reference to the Judicial Panel on Multidistrict Litigation. The parties propose that this
8 Court should handle all claim construction, pretrial, and trial issues.

9 **XV. NARROWING OF ISSUES**

10 **Open Text's Position on Narrowing:** Open Text anticipates that issues may be narrowed
11 by agreement or by motion as discovery progresses. Open Text proposes asserted claim and prior art
12 theory narrowing as set forth in the proposed schedule.

13 **Defendants' Position on Narrowing:** Defendants propose asserted claim and prior art
14 reference narrowing that is generally consistent with the narrowing schedule endorsed by the Eastern
15 District of Texas as set forth in their proposed schedule.

16 **XVI. EXPEDITED TRIAL PROCEDURE:** Subject to reconsideration in light of any early
17 dispositive motion rulings or other developments in the case, the parties do not currently believe that
18 this case is appropriate for an expedited schedule under General Order 64.

19 **XVII. SCHEDULING: Open Text's Proposal:** Open Text proposes an accelerated schedule for
20 the issues to be consolidated with the *Box* Case (to the extent that this Court adopts Judge Davila's
21 view on consolidation). Both cases have been pending since June 5, 2013, and in this case Open
22 Text served infringement contentions on March 28, 2014 and discovery opened on March 3, 2014.
23 Moreover, as both cases are injunction cases between competitors, an accelerated schedule will serve
24 the interests of the parties. Further, any trial date after October 10, 2015, is more than 18 months
25 from the April 10, 2014 case management conference. (Dkt. Nos. 110, 115.) Because this case has
26 already been pending for a year, Open Text contends that the additional delay sought by Defendants
27 is unwarranted and prejudicial. **Defendants' Proposal:** In compliance with the instruction of Judge
28 Davila to consolidate this case with the *Box* case for claim construction, validity, and discovery

1 issues (see Case Number 13-4843, Transcript of Proceedings April 10, 2014 at p. 4:11, 14-25),
 2 Defendants propose a schedule based on the Patent Local Rules deadlines with June 27, 2014 as the
 3 due date for Defendants' Preliminary Invalidity Contentions and Patent L.R. 3-4 Document
 4 Production and as the basis for calculating all subsequent due dates, including a proposed trial date
 5 of December 8, 2015.

EVENT	OPEN TEXT'S PROPOSED DATES	DEFENDANTS' PROPOSED DATES
Fed. R. Civ. P. 26(a)(1) Initial Disclosures	March 21, 2014	March 21, 2014
Initial Case Management Conference	June 18, 2014	June 18, 2014
Patent L.R. 3-1 Preliminary Infringement Contentions and Patent L.R. 3-2 Document Production	Served on March 28, 2014	Served on March 28, 2014
Patent L.R. 3-3 Preliminary Invalidity Contentions and Patent L.R. 3-4 Document Production	June 20, 2014	June 27, 2014
Last Day to Serve Preliminary Election of Asserted Claims—Plaintiff to Elect No More than 32 Claims	June 27, 2014	September 25, 2014
Last Day for Defendants to Serve Preliminary Election of Asserted Prior Art	July 7, 2014 – Open Text's Proposal: Defendants to Narrow Number of Prior Art References to Not More than 12 References Against Each Patent and Not More than 40 Total References. If, in its Preliminary Election of Asserted Claims, Open Text reduces the total number of patents asserted (from 9 to a lower number), then Defendants shall narrow prior art references to no more than 9 references against each patent asserted, and the total number of references shall be reduced by 2 for each patent that Open Text eliminates.	October 9, 2014 – Defendants' Proposal: Defendants to Narrow Number of Prior Art References to Not More than 40 Total References. If, in its Preliminary Election of Asserted Claims, Open Text reduces the total number of patents asserted (from 9 to a lower number), then the total number of references Defendants may submit shall be reduced by 2 for each patent that Open Text eliminates.
Patent L.R. 4-1 Exchange of Proposed Terms	July 11, 2014	July 11, 2014
Patent L.R. 4-2 Exchange of Preliminary Claim Constructors	July 18, 2014	August 1, 2014
Patent L.R. 4-3 Joint Claim	July 30, 2014	August 26, 2014

EVENT	OPEN TEXT'S PROPOSED DATES	DEFENDANTS' PROPOSED DATES
Construction and Prehearing Statement		
Patent L.R. 4-4 Close of Claim Construction Discovery	August 8, 2014	September 25, 2014
Patent L.R. 4-5(a) Opening Claim Construction Brief	August 15, 2014	October 10, 2014
Patent L.R. 4-5(b) Responsive Claim Construction Brief	August 22, 2014	October 24, 2014
Patent L.R. 4-5(c) Reply Claim Construction Brief	August 27, 2014	October 31, 2014
Tutorial	September 17, 2014, if convenient for the Court	November 14, 2014, if convenient for the Court
Claim Construction Hearing	September 17, 2014, if convenient for the Court	November 14, 2014, if convenient for the Court
Fact Discovery Cut-off	September 17, 2014	February 27, 2015
Final Election of Asserted Claims—Plaintiff to Elect No More than 16 Claims	September 17, 2014	March 13, 2015
Final Election of Invalidity Theories	September 26, 2014 – Open Text's Proposal: Defendants to Elect No More than 3 Prior Art Invalidity Theories per Claim and No More Than 20 References Total	April 10, 2015 -- Defendants' Proposal: Defendants to Elect No More Than 20 References Total
Opening Expert Reports Due (on any issue for which a party bears the burden of proof)	September 26, 2014	April 10, 2015
Rebuttal Expert Reports Due	October 8, 2014	May 13, 2015
Expert Discovery Cut-off	October 17, 2014	June 17, 2015
Deadline for Filing Dispositive Motions (including <i>Daubert</i> Motions)	October 31, 2014	July 24, 2015
Final Pretrial Conference	February 25, 2015, if convenient for the Court ²	November 23, 2015, if convenient for the Court ³
Jury Trial	March 11, 2015, if convenient for the Court	December 8, 2015, if convenient for the Court

XVIII. **TRIAL:** The parties have requested a jury trial on all issues triable to a jury. Open Text

² Open Text proposes that the parties also adopt a schedule and procedures for the completion of pretrial events, including, for example: motions *in limine* deadlines; exhibit lists and objections exchanges; deposition designations and objections and counter-designations exchanges; joint proposed jury instruction submission; exhibit submissions; and witness lists and objections submissions.

³ Defendants propose the dates of the final pretrial conference and trial to occur after the Box pretrial conference and trial with the understanding that Judge Davila indicated that this case be consolidated with the Box case only for pretrial purposes.

1 estimates that the trial will last six Court days. Defendants estimate that the trial will last seven to
 2 ten Court days.

3 **XIX. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS:** The
 4 parties have filed the required Certifications of Interested Entities or Persons as required by Civil
 5 Local Rule 3-16.

6 **XX. PATENT RELATED ISSUES PURSUANT TO PATENT LOCAL RULE 2-1(A)**

7 The parties propose addressing the topics required by Patent L.R. 2-1(a) as follows:

8 1. Proposed Modification of the Deadlines set forth in the Patent Local Rules: **Open Text's**
 9 **Proposal:** Open Text proposes modifying the deadlines set forth in the Patent Local Rules
 10 according to its above-proposed schedule. **Defendants' Proposal:** Defendants propose the above
 11 schedule set forth in the Patent Local Rules based on a June 27, 2014 as the due date for Defendants'
 12 Preliminary Invalidity Contentions and Patent L.R. 3-4 Document Production and do not propose
 13 modifying the deadlines set forth in the Patent Local Rules.

14 2. Claim Construction Discovery, Including from Expert Witnesses: The parties do not
 15 envision any further limits on discovery related to claim construction. To the extent either party
 16 relies on factual or expert testimony or declarations to support any claim construction position, the
 17 parties agree that they shall meet and confer about the timing of depositions of each individual upon
 18 whose testimony or declaration a party may rely.

19 3. Claim Construction Hearing Format: **Open Text's Proposal:** Open Text proposes that
 20 Open Text present first. Open Text does not currently anticipate presenting live testimony at the
 21 Claim Construction Hearing, but reserves the right to present live expert testimony should the Court
 22 permit it. Open Text estimates the length of the Hearing will be approximately 4 hours.

23 **Defendants' Proposal:** The Claim Construction Hearing proceeds on a term-by-term basis, with
 24 Open Text going first on each odd-numbered term, and Defendants presenting first on each even-
 25 numbered term. Defendants estimate the length of the Hearing be approximately 4 hours – 2 hours
 26 per side.

27 4. Plan for Educating the Court on the Technology at Issue: The parties propose that they
 28 each present a technology tutorial to the Court.

1 **CASE MANAGEMENT ORDER**

2 The above JOINT CASE MANAGEMENT STATEMENT & PROPOSED ORDER is approved as
3 the Case Management Order for this case and all parties shall comply with its provisions. [In
4 addition, the Court makes the further orders stated below:]

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6 IT IS SO ORDERED.

7 Dated: _____

8 UNITED STATES DISTRICT/MAGISTRATE
9 JUDGE

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1 Dated: June 11, 2014

Respectfully submitted,

2 COOLEY LLP

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15 *Attorneys for Plaintiff Open Text S.A.*

16 Dated: June 11, 2014

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10
11 Pursuant to Local Rule 5-1(i)(3) regarding signatures, I, Sarah J. Guske, attest that concurrence in
12 the filing of this document has been obtained from each of the other signatories. I declare under
13 penalty of perjury under the laws of the United States of America that the foregoing is true and
14 correct. Executed this 11th day of June, 2014 at Broomfield, Colorado.

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16 /s/ Sarah J. Guske
17 Sarah J. Guske
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